WA 223/2006
BEFORE
HON'BLE JUSTICE RANJAN GOGOI
THE HON'BLE JUSTICE SMT. A. HAZARIKA.
JUDGMENT & ORDER (Oral)

Ranjan Gogoi, J.

1. After hearing Dr. A. K. Saraf, Sr. Advocate, assisted by Mr. S. Chetia, learned counsel appearing for the appellants who are the respondents in W.P.(C) No.8578 of 2005 and Sri K. N. Choudhury, learned Senior Advocate appearing for t he respondent in the appeal who is the petitioner in W.P.(C) No.8578/2005, both the Writ Appeal and the writ petition registered and numbered as W.P.(C) 8578/20 05 are being disposed of by this common order.

2. The respondent in the appeal was granted a contract for Operation and M aintenance of ONGC owned Coil Tubing and Acid Pumper . On an allegation that the aforesaid contract was 'procured' by the respondent by intentional misstatement of relevant facts, the appellant issued a show cause notice dated 15.11.2005 re quiring the respondent to show cause as to why it should not be barred from havi ng any further/future business dealings with the appellant ONGC. In other words, the respondent was asked to show cause as to why it should not be blacklisted. The respondent submitted a reply dated 21.11.2005 requiring the appellant ONGC to inform the specific provisions of law under which the show cause notice dated 15.11.2005 was issued. No reply to the allegations raised in the show cause not ice dated 15.11.2005 was, therefore, filed by the respondent. Thereafter, by an order dated 23.5.2006, the appellant, ONGC, barred the respondent from having an y future/further business dealings with it.

3. At the stage when the show cause notice dated 15.11.2005 was issued, the respondent, as the writ petitioner, had instituted the writ proceeding register ed and numbered as W.P.(C) No.8578 of 2005 calling into question the show cause notice dated 15.11.2005. Thereafter, when the order dated 23.5.2006, as noticed above, was passed by the ONGC, W.P.(c) No.2938 of 2006 was filed by the responde nt as the writ petitioner, challenging the said order dated 23.5.2006. While the W.P.(C) No.8578/2005 remained pending, W.P.(C) No.2938/2006 was disposed of at the motion stage by requiring the respondent in the writ appeal(writ petitioner) to file a detailed representation to the ONGC authorities for recall of the ord er dated 23.5.2006. By the order dated 16.6.2006 by which the said writ petition i.e. W.P.(C) No.2938 of 2006 was closed, the ONGC authorities were also require d to dispose of the representation of the petitioner within 30 days from the dat e of receipt thereof. The learned Single Judge by the order dated 16.6.2006 pass ed in W.P.(C) No.2938 of 2006 also directed that till such time that the represe ntation of the present respondent is disposed of the order dated 23.5.2006 shall not be given effect to. Aggrieved, Writ Appeal No.223 of 2006 has been filed ag ainst the aforesaid order dated 16.6.2006 passed by the learned Single Judge in W.P.(C) No.2938/2006.

4. In so far as the challenge made in W.P.(C) No.8578 of 2005 is concerned, the Court understands that in view of the subsequent order dated 23.5.2006 pass ed by the ONGC authorities finalizing the show cause notice dated 15.11.2005, th e aforesaid writ petition has become virtually infructuous. This is precisely wh y the subsequent writ petition i.e. W.P.(C) No.2938/2006, out of which this appe al has arisen, was filed by the petitioner. In any event, the notice dated 15.1 1.2005 having merely required the respondent in the appeal to file its reply to a proposed course of action of blacklisting and it being always open for the sai d respondent/writ petitioner to show cause and contest the action proposed, the Court will not understand the notice dated 15.11.2005 to be vitiated by any such infirmity which would require interference in the exercise of the high prerogat ive writ power. W.P.(C) No.8578 of 2005, therefore, shall stand closed in terms of the above observations.

5. This will bring the Court to a consideration of the merits of the writ appeal filed by the ONGC against the order dated 16.6.2006 passed by the learned Single Judge in W.P.(C) No.2938/2006. This Court has noticed that by an interim order dated 28.6.2006 this Court, while admitting the Writ Appeal to regular hearing, had stayed the operation of the impugned order dated 16.6.2006 passed by the learned Single Judge. A period of almost one year has rolled by in the meantime. By the order dated 23.5.2006, which was challenged in W.P.(C) No.2938/2006, the respondent in the appeal has been blacklisted by the ONGC. Though the order dated 23.5.2006 had been passed in circumstances where the respondent had failed to file its reply to the show cause notice dated 15.11.2005, if the learned Single Judge, hearing the writ petition registered and numbered as W.P.(c) No.2938 of 2006, had taken the view that the interest of justice would be better served if the matter is re-considered by the ONGC authorities in the light of the reply to be filed by the respondent-writ petitioner, and on that basis had directed the ONGC to pass fresh orders in the matter after hearing the respondent-writ petitioner, this Court will understand the order dated 16.6.2006 passed in W.P.(C) No.2938/2006 to be fully justified. However, if the allegations levelled against the respondent-writ petitioner in the show cause notice dated 15.11.2005 were yet to be demonstrated to be frivolous and unsustainable and if the learned Single Judge hearing the writ petition had directed a reconsideration of the matter in the light of the reply to be filed by the respondent-writ petitioner, we find it difficult to sustain the latter part of the order of the learned Single Judge by which it was directed that until the matter is re-decided, the order dated 23.5.2006 should not be given effect to. In a situation where the respondent-writ petitioner did not file its reply to the show cause notice dated 15.11.2005 and the allegations levelled in the show cause notice dated 15.11.2005 remained uncontroverted, we are of the view that the learned Single Judge ought not to have restrained the ONGC from acting pursuant to the order of blacklisting dated 23.5.2006. Such a direction, according to us, should have been held back till such time that the respondent-writ petitioner stood fully exonerated of the allegations levelled in the show cause notice dated 15.11.2005.

6. It has now been brought to our notice that, in the meantime, the respondent-writ petitioner had filed its reply to the show cause notice dated 15.11.2005. As already noticed by us, nearly a year had gone bye while the appeal has remained pending. In the aforesaid changed situation and in the totality of the facts and circumstances of the case we are of the view that this writ appeal should be disposed of by directing the appropriate authority in the ONGC to consider the reply/representation of the petitioner as against the show cause dated 15.11.2005 and to pass a fresh reasoned order, after hearing the respondent-writ petitioner, within a period of one month from today. As it has not been brought to our notice that any NIT has been issued by the ONGC which is likely to be finalized within the aforesaid period of one month, we are of the view that until the matter is re-decided, as directed by us, the order dated 23.5.2006 passed by the ONGC should be allowed to hold the field.

7. Mr. K. N. Choudhury, learned Senior Advocate appearing for the respondent in the appeal, submits that, if required, the said respondent may be allowed to file an additional reply/representation. Such additional reply/representation, if so desired, may be filed within a period of 7 days from today, in which event, final orders as already directed by us, will be made within the next 30 days, thereafter.

The above order of ours will dispose of Writ Appeal No.223 of 2006 as well as the W.P.(C) No.8578 of 2005.

JUDGE JUDGE